



*Nez Perce*

## TRIBAL EXECUTIVE COMMITTEE

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January 20, 2004

Mark French  
U.S. DOE  
Richland Operations Office  
P.O. 550 (A4-79)  
Richland, WA 99352

Laura Cusack  
Washington State Dept. of Ecology  
Nuclear Waste Program  
1315 West 4<sup>th</sup> Ave.  
Kennewick, WA 99336

Nick Ceto  
U.S. EPA  
Hanford Project Office  
712 Swift Blvd., Suite 5  
Richland WA 99352

Re: *Proposed M-91 Change Package and Settlement Agreement*

Dear Mr. French, Ms. Cusack, and Mr. Ceto:

The Nez Perce Tribe has been reviewing the Tri-Party Agreement Milestone-91 change package and settlement agreement. In addition, Mr. French came to Lapwai on December 2<sup>nd</sup> to present an overview of the status of the change package to the staff of the Environmental Restoration and Waste Management (ERWM) program and to answer questions.

The Nez Perce Tribe retains reserved treaty rights in the Mid-Columbia region under the 1855 Treaty with the United States Government. These rights have been recognized and reaffirmed through subsequent Federal and State actions. These actions protect Nez Perce rights to utilize our usual and accustomed resources and resource areas, including those in the Hanford Reach of the Columbia River. Accordingly, ERWM has support from the U.S. Department of Energy (DOE) to participate in and monitor relevant DOE activities. We believe that most of what occurs at Hanford is relevant to reserved treaty rights, and we maintain involvement in part through consultation.

This letter reflects the comments and concerns of the Tribe regarding the Tri-Party agencies efforts to determine how to deal with retrieval, classification and treatment (when necessary) of waste placed in retrievable storage (RSW) in four low-level burial grounds in the 200 Area at the Hanford site between 1970 and 1988, and to insure facilities for readying transuranic (TRU) waste for shipment to the Waste Isolation Pilot Plant (WIPP) in New Mexico. These efforts

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encompass contact- and remote-handled suspect transuranic and mixed low-level waste currently stored in low-level burial grounds and that which may be generated in the future during cleanup. The Tribe is aware that the agreement will not become final until the parties consult with area Tribes, the Hanford Advisory Board, and consider comments from the public.

The Tribe understands that the M-91 change package addresses retrieval of all RSW, designating whether or not it is mixed waste (i.e., has a hazardous waste component in addition to radionuclide component). The change package also addresses compliance schedules for waste that requires treatment, safe storage, and preparation of TRU waste for shipment to WIPP. The Nez Perce see this is another step forward in processing 200 Area waste and hastening removal of TRU waste from Hanford. It is clear, in addition, that it is not in the realm of the M-91 milestones to address disposal.

The Tribe also understands that handling and disposition of pre-1970 waste that may be TRU will be established through RCRA corrective actions, RCRA closures, and CERCLA response actions. The Nez Perce ERWM program staff will be following those actions closely, and hope to maintain clear lines of communication with DOE project leaders involved in TRU issues.

It also appears to us that these milestones do not address any possible future designation and disposition of tank waste as TRU waste. If some amount of tank waste can be handled as TRU, we would like a clearer understanding of what framework regulates its disposition.

At the present time the transport of off-site TRU to Hanford is halted and in litigation. If it should resume after settlements between the Tri Parties, we understand it would be processed in the same manner as Hanford TRU waste. We repeat a primary concern from the ERWM letter to Mr. Keith Klein in January 2003 regarding bringing off-site TRU to Hanford. The Nez Perce remain deeply concerned that the WIPP is not currently licensed to accept remote-handled TRU, and we expect to be kept informed of the status of that licensing effort. Through ERWM's discussion on December 2 with Mr. French, we learned that Hanford does have access to mobile specialized characterization equipment (from WIPP), shared with other DOE Legacy sites, and has been calibrating it on-site for future use.

Having shared these comments, the Tribe wishes to acknowledge the efforts the Tri-Party agencies have exercised to deal with these waste issues, and we hope the matters still in litigation will be settled in a manner fair to all. Ultimately, it is the health and fate of the Columbia River and its resources that the Tribe wishes to protect.

Sincerely,



Anthony D. Johnson  
Chairman

Cc: Kevin Clark, DOE  
Keith Klein, DOE-RL  
Armand Minthorn, CTUIR BOT  
Stuart Harris, CTUIR  
Russell Jim, YN  
Ken Niles, State of Oregon